

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ERIC D. STRUNK COLEMAN,	:	
	:	NO. 1:08-CV-00088
Plaintiff,	:	
	:	
	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
	:	
WESTERN HILLS COUNTRY CLUB,	:	
	:	
Defendant.	:	

This matter is before the Court on the Report and Recommendation in which the assigned Magistrate Judge recommended that Defendant's Motion to Dismiss be granted (doc. 8). For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety.

Plaintiff filed a pro se complaint pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., alleging discrimination in employment against Defendant Western Hills Country Club (doc. 1). Thereafter, Defendant filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), which authorizes dismissal for "failure to state a claim upon which relief can be granted" (doc. 5). On April 3, 2008, the Magistrate Judge issued a Report and Recommendation (doc. 8). Neither party filed an objection, but on April 21, 2008, Plaintiff filed a motion asking the Court to appoint counsel and seeking an extension of time to file a response to the Report and Recommendation (doc. 10).

The Court granted Plaintiff's motion to appoint counsel on the condition that the Volunteer Lawyers Project for the Poor ("VLP") was successful in obtaining counsel willing to accept the case and represent Plaintiff in this action (doc. 12). The Court held this matter in abeyance pending the results of the referral to the VLP (Id.). On July 14, 2008, the Court received a letter from the VLP indicating that they were unable to refer the Plaintiff's case to an attorney (doc. 15). Therefore, the Court must now consider the Magistrate Judge's Report and Recommendation.

In the Report and Recommendation, the Magistrate Judge considered Defendant's contention that Plaintiff's failure to file a timely charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") requires dismissal of his complaint under Fed. R. Civ. P. 12(b)(6) (doc. 8). The Magistrate Judge noted that "[i]n a Title VII action, a plaintiff must file a timely charge of discrimination with the EEOC before filing a federal lawsuit," which, in this case meant that Plaintiff was required to file his EEOC charge within 300 days of the date of his termination (Id., citing Alexander v. Local 496, Laborers' International Union of North America, 177 F.3d 394, 407 (6<sup>th</sup> Cir. 1999), cert. denied, 528 U.S. 1154 (2000)). The Magistrate Judge found that because Plaintiff failed to file a timely EEOC charge, and because Plaintiff did not claim that equitable tolling should be applied in this case, that Plaintiff's Title VII claims were time-barred and

recommended that this case be dismissed (doc. 8). The Court, having fully considered this matter, finds the Magistrate Judge's Report and Recommendation well-reasoned, thorough, and correct.

The parties were served with the Report and Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b)(1)(C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither party filed any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C).

Having reviewed this matter de novo pursuant to 28 U.S.C. §636(b), the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety (doc. 8), and therefore GRANTS Defendant's Motion to Dismiss (doc. 5).

SO ORDERED.

Dated: July 22, 2008

/s/ S. Arthur Spiegel

S. Arthur Spiegel  
United States Senior District Judge